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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's)
Rules to Permit Flexible)
Service Offerings in the)
Commercial Mobile Radio Services)
)

WT Docket No. 96-6

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JOINT COMMENTS OF BELL ATLANTIC CORPORATION,
NYNEX CORPORATION AND BELL ATLANTIC NYNEX MOBILE INC.

I. INTRODUCTION AND SUMMARY

Bell Atlantic, NYNEX and Bell Atlantic NYNEX Mobile applaud the continued actions taken by the Commission in the First Report and Order to stimulate a more robust competitive environment by concluding that "service providers using spectrum allocated for CMRS should have the flexibility to provide fixed services on a co-primary basis with mobile services."¹ This action furthers the intended goal of the 1996 Telecommunications Act to open telecommunications markets to competition² between various providers of telecommunications services, including competitive alternatives to traditional local exchange service.³ In addition to stimulating potential competition between

¹ First Report, para. 24.

² Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. (1996), Preamble at 113.

³ First Report, para. 22.

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wireless and wireline service providers, the action of the Commission will also provide CMRS licensees increased opportunities to utilize spectrum resources in providing innovative services.

The Commission seeks comments concerning the appropriate regulatory treatment to be accorded new fixed services provided by CMRS providers utilizing CMRS spectrum. We fully support the imposition of only the minimal regulation necessary based on the characteristics of the service provided. We concur with the view of Congress and the Commission that regulation should only be imposed when competitive forces are insufficient to ensure a robust competitive marketplace. The imposition of unnecessary regulatory burdens will only impede the development of innovative fixed services. Until the Commission has more information about how these fixed services will be offered, it should refrain from adopting new rules and regulations. Instead, it should establish the processes by which it will quickly review and determine the regulation, if any, for all competing services on a case-by-case basis.⁴

II. MAINTAINING REGULATORY PARITY IS THE FIRST OBJECTIVE

Any action taken by the Commission must be consistent with the principles of regulatory parity. In the Second Report and Order in GN Docket No. 93-252

⁴ In some cases, the appropriate regulatory treatment may be to reduce or relax regulation of the wireline service with which the new fixed mobile service is competitive.

the Commission interpreted the elements of CMRS “in a matter that ensures that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations.”⁵ In applying the principle of symmetrical regulation, the Commission determined that PCS, cellular and other broadband CMRS will likely compete with one another and thus should be subject to the same regulations.⁶ All CMRS providers, therefore, should be permitted to offer a broad array of fixed services on a co-primary basis with mobile services. CMRS providers should not be constrained in the array of permissible fixed services based on their classification (e.g., narrowband or broadband) or on the particular technology employed. All carriers should be accorded equal opportunity to explore innovative fixed services utilizing their assigned CMRS spectrum. Regulatory oversight, if appropriate, must be based on the service offered and the extent to which the fixed service is a substitute for wireline services.⁷

⁵ Implementation of Section 3(n) and 332 of the Communications Act, GN Docket No. 93-252, para. 19, 9 FCC Rcd 1411 (1994). (“Second Report and Order”)

⁶ The Commission correctly concludes that narrowband CMRS may also compete with broadband CMRS. Thus, subjecting narrowband licensees to more stringent regulatory constraints than competing broadband CMRS providers would be inconsistent with principles of regulatory parity and serves no public interest goal.

⁷ To the extent the Commission finds that future fixed wireless services substitute for wireline services, regulatory parity requires that CMRS licensees and LECs be subject to the same regulations.

III. ADDITIONAL INFORMATION MAY BE REQUIRED TO DETERMINE APPROPRIATE REGULATORY TREATMENT OF NEW FIXED WIRELESS SERVICES

In the CMRS Second Report and Order the Commission included services having both fixed and mobile capabilities within the definition of “mobile service.”⁸ In the First Report in this Docket, the Commission concludes that existing “ancillary,” “auxiliary,” and “incidental” mobile services permitted under the CMRS Second Report and Order will continue to be subject to CMRS regulation.⁹ We agree that additional information may be required to permit an informed examination by the Commission concerning the nature and appropriate regulation of a new fixed service that is not “ancillary”, “auxiliary”, or “incidental”.¹⁰

We concur with the Commission that the appropriate regulatory treatment for a fixed service not presently being provided by a CMRS licensee as an auxiliary, ancillary or incidental service pursuant to the Second Report and Order must be resolved on a case-by-case basis.¹¹ However, now is not the time to

⁸ Second Report and Order at para. 36; 47 CFR § 20.7(g).

⁹ First Report, para. 48.

¹⁰ Id., para. 47, 53.

¹¹ The Commission has identified the principal factors which impact on the determination of appropriate regulatory treatment:

Relative mobility of mobile stations used in conjunction with the fixed service; whether the fixed service is part of a larger package which includes mobile services or is offered alone; the size of the service area over which the fixed wireless service is provided; the amount of mobile versus fixed traffic over the

establish the criteria for making this evaluation. Too little is known about these new services and how they will develop.

The critical element for any case-by-case resolution is that an opportunity for expedited review occur early in the deployment of a new fixed service. Any delay in resolution could entail significant customer disruption if it is subsequently determined that a new fixed service should be subject to regulation other than CMRS regulation. To the extent the service is deployed, maintenance of the status quo and avoidance of customer disruption may impede the Commission's ability to determine the appropriate regulatory treatment.

The Commission should establish a process for expeditiously determining on a case-by-case basis the regulatory status for new fixed wireless services offered by CMRS providers.¹² The process should also address generally what additional information may be relevant to the Commission's determination of appropriate regulation of new fixed services.

wireless system; whether the fixed service is offered over a discrete block of spectrum separate from the spectrum used for mobile services; the degree to which fixed and mobile services are integrated and whether the customers perceive the service to be a fixed service. First Report, para. 52.

¹² Section 1.2 of the Commission's Rules, 47 CFR § 1.2, provides for the Commission to issue a declaratory ruling to remove uncertainty. A CMRS provider or any third party may request a Commission determination of the appropriate regulation to be applied to a new fixed service. These requests should be handled by the Commission on an expedited basis to achieve prompt resolution.

IV. CONCLUSION

Innovative fixed wireless services offer another option in achieving the Congressional goal of promoting competition in telecommunications markets. The key to achieving a more robust competitive environment is to assure that regulatory parity among all CMRS providers is maintained among competing services and that a process is developed to expeditiously address the appropriate regulatory treatment, if any, of new fixed services offered by CMRS providers.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, Susan Sonnenberg, hereby certify that copies of the foregoing JOINT COMMENTS of Bell Atlantic Corporation, NYNEX Corporation [and Bell Atlantic NYNEX Mobile Corporation] in WT Docket No. 96-6 were served on the parties listed on the attached service list, this 25th day of November, 1996, by first class United States mail, postage prepaid.


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